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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JAN 16 2007

UICs: 408.00-00
408.03-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Plan X:

IRA X:

Date 1:

Date 2:

Date 3:

Date 4:

Month 1:

State U:

Company AA:

Company BB:

Amount 1:

Amount 2:

Amount 3:

Dear

This is in response to the , letter, as supplemented by correspondence dated , and , in which you request a letter ruling under section 408(d)(3) of the Internal Revenue Code ("Code"). The following facts and representations support said ruling request.

Taxpayer A, a resident of State U, is a former employee of Company AA and a former participant in Plan X, a plan described within the meaning of Code section 401(a) sponsored by Company AA. On or about Date 3, 2003, Company BB, the administrator of Plan X, transferred Amount 2 to IRA X, an individual retirement account described in Code section 408(a) set up and maintained to benefit Taxpayer A with Company BB. During Month 1, 2003, Company BB transferred a further Amount 3 to IRA X.

On or about Date 1, 2005, Taxpayer A requested a distribution in the amount of Amount 2 from his IRA X. The copy of the request for the Date 1, 2005 distribution which accompanied this ruling request contains the annotation "aftertax pre-87". By letter dated Date 4, 2005, Company BB described Amount 2, which had been placed in Taxpayer A's IRA X on or about Date 3, 2003, as "after-tax monies". In response to the Date 4, 2005 letter, Taxpayer A made a second request via an E-Mail dated Date 2, 2005, in which he referenced the Date 4, 2005 letter and again requested the distribution of Amount 2 from his IRA X as a return of his after-tax contributions to Plan X which had been transferred to his IRA X as noted above. In effect, Taxpayer A asserts that he made two attempts to receive the same sum of money. However, Company BB mistakenly made two distributions to him, each distribution being in the amount of Amount 2, for a total of Amount 1.

Taxpayer asserts that although he did, in fact, request the first, Date 1, 2005, distribution referenced above, the second distribution was made in error because Company BB failed to recognize that each of his two distribution requests, when read in conjunction with his Date 2, 2005 E-Mail, constituted a request for the same funds-Amount 2 which represented the amount of his after-tax contributions to Plan X. In effect, Taxpayer A asserts that he never requested the second distribution. Taxpayer A also asserts that he has, and has had continuously since Date 2, 2005, sufficient funds to return Amount 2 to IRA X or another IRA described in Code section 408(a).

Taxpayer A requests the following letter ruling:

1. That pursuant to Code section 408(d)(3)(I) and Revenue Procedure 2003-16, Taxpayer A is granted a period not to exceed 60 days as measured from the date of this letter ruling to roll over the amount (not to exceed Amount 2) distributed

from IRA X on or about Date 2, 2005, into IRA X or another IRA described in Code section 408(a) set up and maintained in the name of Taxpayer A.

With respect to your ruling request, Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Code section 408(a)(6) provides, in general, that rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(C) of the Code provides, in general, that the IRA rollover rules do not apply to inherited accounts. The term "inherited account" does not apply to an IRA that is acquired by the surviving spouse of an IRA owner by reason of the death of the IRA owner.

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Section 408(d)(3)(E) of the Code provides, in general, that distributions required to be made under either section 408(a)(6) or section 408(b)(3) may not be rolled over.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

With respect to your ruling request, the Service notes that Taxpayer A received two distributions each of which was in the amount of Amount 2. Furthermore, as asserted by Taxpayer A, each of the requests was made for a distribution of an amount equal to Taxpayer A's after-tax contributions. Thus, the Service believes the documentation that accompanied Taxpayer A's ruling request is consistent with his assertion that he requested the same funds on two occasions but that Company BB, contrary to Taxpayer A's request and intent, made two distinct distributions.

Thus, based on the above facts and representations, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of an amount not to exceed Amount 2 which was distributed from Taxpayer A's IRA X on or about Date 2, 2005. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days as measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount not to exceed Amount 2 either to IRA X or to another IRA described in Code section 408(a) set up and maintained in his name. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

This letter assumes that IRA X was described within Code section 408(a) at all times relevant thereto. It also assumes that the rollover IRA (or IRAs) into which an amount not to exceed Amount 2 will be contributed will also be described in Code section 408(a).

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Finally, it assumes that Plan X was qualified within the meaning of Code section 401(a) at the time(s) the distributions therefrom (referenced above) were made.

Please note that, pursuant to Code section 408(d)(3)(E), this ruling letter does not authorize the rollover of amounts distributed from IRA X to the extent (if any) said amounts were required to be distributed with respect to calendar years 2005 and 2006.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

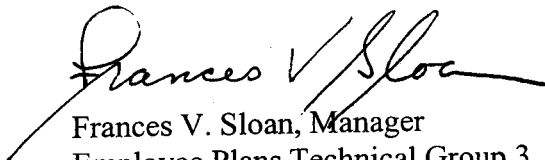
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact

SE:T:EP:RA:T3, at

(not a toll-free number).

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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